



सत्यमेव जयते

The Gujarat Government Gazette

EXTRAORDINARY PUBLISHED BY AUTHORITY

VOL. LXII]

TUESDAY, MAY 25, 2021 / JYAITHA 4, 1943

Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART IV-A

**Rules and Orders (Other than those published in Parts I, I-A, and I-L) made
by the Government of Gujarat under the Central Acts**

HEALTH AND FAMILY WELFARE DEPARTMENT

NOTIFICATION

Sachivalaya, Gandhinagar, 30th April, 2021.

**HUMAN IMMUNODEFICIENCY VIRUS AND ACQUIRED IMMUNE DEFICIENCY SYNDROME
(PREVENTION AND CONTROL ACT, 2017).**

NO:GP/17/AID/102019/702/G/G.S.R.- In exercise of the powers conferred by section 49 read with section 23, 25, 26 and 34 of the Human Immunodeficiency Virus And Acquired Immune Deficiency Syndrome (Prevention And Control) Act, 2017 (No. 16 of 2017), the Government of Gujarat hereby makes the following rules, namely:-

1. Short title and commencement.-

- (1) These Rules shall be called the **Gujarat Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention And Control) Rules, 2021.**
- (2) They shall come into force on the date of their publication in the *Official Gazette*.

2. Definitions.-

(1) In these rules, unless the context otherwise requires,-

- (a) "Act" means the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017 (No. 16 of 2017);
- (b) "Appropriate Authority" means, unless otherwise notified, the National AIDS Control Organisation (NACO) in case of the Central Government and the Gujarat State AIDS Control Society (GSACS) in case of the State Government;
- (c) "ART" means Anti Retro Viral Treatment.
- (d) "Child Welfare Committee" means Child Welfare Committee constituted under section 27 the Juvenile Justice (Care and Protection of Children) Act, 2015 (Act No. 2 of 2016);
- (e) "Complaint" means any information or grievance made orally or in writing to the Ombudsman;
- (f) "District" means revenue district of the State;
- (g) "Form" means the forms annexed to these rules.
- (h) "High burden districts" means districts as notified by the appropriate authority under the Central Government with specific mention of organization or sources and Years for declaring as such.
- (i) "Ombudsman" means an Officer designated by the State Government, under section 23 of the Act;
- (j) "Selection Committee" means a committee constituted by the State Government under rule 12 of these rules;

- (k) State Level Network (SLN) means community base organisation of People living with HIV members, including Gujarat State Network of People living with HIV/AIDS (GSNP+) and their associated District Level Network ("DLN") in State of Gujarat; and
- (l) 'State Grievance Redressed Committee (SGRC)' means committee formed as per the directives of Supreme Court for redressal of grievances at ART centres.

(2) All other words and expressions used in these Rules but not defined shall have the meaning respectively assigned to them in the Act.

3. Diagnostic Facilities.-

The Gujarat State AIDS Control Society shall:-

- (1) Provide free diagnostic services to all individuals in the Government, Health Service Centres and Hospitals across the State; (treatment protocol and reporting) and also ensure quality of services related to HIV provided by Private Service provider.
- (2) Provide ART drugs free of cost to all HIV positive persons as per the provisions of the Act and guidelines issued by National AIDS Control Organisation;
- (3) Ensure that Opportunistic Infection (OIs) shall also be managed at the level of Institute having ART centre with State Government's support and all Opportunistic Infection drugs are made available as per NACO guidelines free of cost for the Persons Living with HIV in need from these Institutes.

4. Appointment of Ombudsman.-

- (1) The Regional Deputy Director, Health and Medical Services shall ex-officio Ombudsman for the purpose of Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017.
- (2) Within thirty days of the appointment of the Ombudsman, the appropriate authority under the State Government shall disseminate information about the office of the Ombudsman, including the Ombudsman's jurisdiction, role, functioning and procedures, and the manner in which complaints can be made to the Ombudsman;
- (3) Dissemination shall be undertaken to advance the understanding, in particular, of protected persons, healthcare workers, legal aid service authorities and civil authorities.

5. Functions and responsibilities of the Ombudsman.-

The Ombudsman shall perform the following functions, namely,-

1. Take cognizance of complaints and conduct inquiry into the violations of the provisions of the Act, in relation to acts of discrimination mentioned in section 3 of the Act and providing of healthcare services by any person including child affected by HIV.
2. If any protected person not willing to file a complaint to Ombudsman directly due to fear or stigma issues, District Level Network of People Living with HIV/AIDS and other State level Grievance Redressal committee may intervene with- written consent of such protected person. District Level Network of People Living with HIV and State Grievance Redressal Committee can make a complaint on behalf of protected person with the Ombudsman for justice. The Health Department; Gujarat Government shall provide the travel expenses to complainant for visiting the ombudsman office, which can be reimbursed under the Jatan Project through existing mechanism of GSACS/GSNP +.
3. Adjudicate and dispose of complaint of violations of the provisions of section 3 and provisions of health care services, provided by the State Government.
4. Ensure that the rights and entitlements of child affected by HIV or HIV- affected person or HIV-positive person are protected;
5. Transfer the complaints or matters concerning the child affected by HIV or HIV-affected person or HIV-positive person to other competent authorities like Child Welfare, Committee of the respective districts working as per Juvenile Justice (Care and Protection of Children) Act. 2015 and concerned Ombudsman having jurisdiction in the matter;
6. Conduct regular inspection visits of healthcare provider and institutions where child affected by HIV or HIV-affected person or HIV-positive person are living and recommending action for improvement in quality of services provided by such institutes to the State Government;
7. Take *suo motto* cognizance of cases and reaching out to child affected by HIV or HIV-affected person or HIV-

positive person.

8. Deal with cases referred by the State Government or other authorities;
9. Order the police for registration of first information report for offences committed against any child affected by HIV or HIV-affected person or HIV- positive person;
10. Access appropriate legal services for child affected by HIV or HIV-affected person or HIV-positive person;
11. Make of recommendations to State Government for effective implementation of Act and Rules;
12. Co-ordinate with the health, medical, police, social welfare department and other agencies involved in the welfare of child affected by HIV or HIV-affected person or HIV-positive person;
13. Passing necessary advisory to authorities for protection of rights of the child affected by HIV or HIV-affected person or HIV-positive person;
14. Ombudsman shall refer cases to Judicial Magistrate as define in section 41 of Act dealing with the non-compliance of provisions of Act and these rules;

6. Manner of making complaints and maintaining records by Ombudsman.-

1. Any person may make a complaint to the Ombudsman within whose jurisdiction the alleged violation took place, within three months from the date the person making the complaint became aware of the alleged violation of the Act and these rules:

Provided that, if Ombudsmen is satisfied that circumstances prevented the complainant from making the complaint within the stipulated period; after recording reason thereof, he may extend the time limit to make the complaint by a further period not exceeding of three months.

2. All complaints shall be made to the Ombudsman in writing in Form 1 appended to these rules;
3. District Level Network of People Living with HIV (DLN)/ State. Level Network of People Living with HIV (SLN)/NGO's/Civii society/Government Officers may complain to Ombudsman on the behalf of the protected person.if he/she/TG feel fear of confidentiality with written consent of protected person,
4. The Ombudsman may receive complaints made in person, via post, telephonically, or through electronic form through the Ombudsman's website;
5. Where a complaint cannot be made in writing the Ombudsman shall render all reasonable assistance to the complainant to reduce the complaint in writing;
6. After receipt of a complaint, it shall be recorded by assigning a sequential unique complaint number in a register maintained for that purpose in physical or computerised form.
7. On receipt of the complaint, it shall be acknowledge by sending the unique complaint number by SMS or e-mail to the complainant;
8. The time of the complaints and the action taken on the complaint shall be recorded in the register;
9. The register of complaints shall be maintained in a manner that ensures confidentiality; and comply with data protection measures in accordance with section 11 of the Act.

7. Inquiring into complaints by Ombudsman.-

1. The Ombudsman shall act in an objective and independent manner while inquiry into complaints made under the Act and these rules;
2. On receipt of a complaint or while taking *sou motto* cognizance, the Ombudsman shall hold an inquiry in just and proper manner.
3. The inquiry shall satisfy the basic principles of natural justice and the complainant shall be given an opportunity of being heard and narration of the accused shall be taken into consideration;
4. The Ombudsman shall conduct the inquiry in a friendly manner and shall not use adversarial or accusatory words that adversely impact the dignity or self-esteem of the complainant;
5. While inquiry into complaint under the Act and these rules, the Ombudsman shall give a reasonable opportunity to concerned parties to be heard and in appropriate cases receiving evidence on affidavits:

Provided that cross-examination shall be permitted in inquiries before the Ombudsman;

6. The Ombudsman may, in the interests of justice, take the assistance of experts, including protected persons and persons vulnerable to HIV, and persons working in the fields of HIV and AIDS, public health or health delivery systems;

7. The Ombudsman shall have the power to pass interim orders in cases of medical emergency including directing admissions, operations or treatment and the provision of universal precautions:

Provided that the Ombudsman shall, as soon as may be, after the passing of such interim orders, consider the representations of the parties by giving them a reasonable opportunity to be heard, and in appropriate cases may receive evidence on affidavits, and pass appropriate orders;

8. The Ombudsman shall, within a period of thirty days of the receipt of the complaint and after giving an opportunity of being heard to the parties, pass such order, as he deems fit, giving reasons therefor;

Provided that in cases of medical emergency of HIV positive persons, the ombudsman- shall pass such order as soon as possible, preferably within twenty-four hours or the receipt of the complaint.

9. It shall be the duty of the Ombudsman to inform the complainant of the action taken in relation to the Zomplaint and ensure that the complaints, their number and nature, and the action taken and orders passed in relation to such complaints are published on the website of the Ombudsman.

Provided that, the Ombudsman shall preserve strict confidentiality of the protected person while publishing the orders on the website.

10. The Ombudsman shall provide all parties to the complaint with copies of the written order within 7 days of deciding the complaint;
11. The Ombudsman shall inform the parties to the complaint of their right to seek judicial review against the order passed by him.
12. The Ombudsman shall submit a quarterly report to Health and Family Welfare Department, Legal Department and State AIDS Control Society on the nature of disposal of cases and pendency of cases in the proforma provided by the Health and Family Welfare Department for the purpose of periodical review;
13. All proceedings before the Ombudsman shall be deemed to - be judicial proceedings within the meaning of section 193 of the Indian Penal Code (45 of 1860).

8. Orders passed by Ombudsman.- The Ombudsman on being satisfied after conducting the inquiry, may, pass one or more of the following orders, namely:—

1. pass orders for the withdrawal and rectification of the violation;
2. pass orders directing the person who has committed the violation to undergo a fixed period of counselling related to the violation committed and a fixed period of social service, which shall include working with a non-governmental organisation working on HIV, a protected person's network, or the appropriate authority under the State Government;
3. direct specific steps or special measures or both to be taken;
4. direct any person who has committed the violation to make regular reports to the Ombudsman regarding implementation of the Ombudsman's order;
5. make such orders as to cost as are considered reasonable and such cost shall be utilized for welfare of HIV positive people;
6. directions to healthcare provider or persons or institutions or facilities in whose care the child affected by HIV or HIV-affected person or HIV-positive person is placed, regarding care, protection and rehabilitation of the said person, including directions relating to immediate treatment and services such as medical attention, therapy, psychiatric and psychological support including need-based counselling, occupational therapy etc.;
7. any other order related to any other function;

9. Manner of recording pseudonym and providing suppression of identity in legal proceedings.-

- (1) In any legal proceeding where a court, pursuant to section 34(l)(a) of the Act directs, on an application made by a protected person or any other person, that in the interests of justice the proceeding or any part thereof be conducted by suppressing the identity of such protected person, the Registrar of the court shall direct all parties involved to:
 - (i) File one copy of the documents bearing the full name, identity and identifying details of the parties concerned before the court, which shall be kept in a sealed cover and in safe custody with the Registrar;
 - (ii) Serve one copy of documents bearing the full name, identity and identifying details of the parties concerned upon other parties in the proceeding with a requirement to ensure that the full name and identity of the parties concerned are kept confidential;

(2) The Registrar shall provide pseudonyms to protected persons involved in the legal proceedings in the documents filed before the court in such manner that the identity and identifying details of the protected person involved in the legal proceeding are kept confidential;

(3) The Registrar shall place the sealed covered documents before the court "on the first date the legal proceeding is listed for hearing before the court, if so required by the court;

(4) The identities of the protected person involved in the legal proceeding and their identifying details shall be displayed in pseudonym in all documentation generated by the court in relation to the legal proceeding, including listing of the case on the court Board, interim orders and final judgments;

(5) The identity and identifying details of the protected person involved in the legal proceeding shall not be revealed by any person or their representatives including assistants and staff;

Exception: Where in the interest of justice the name and identity of the protected person needs to be revealed to a third party, it shall only be allowed by an order of the court;

(6) Printing or publishing any matter in relation to the aforementioned legal proceedings in electronic or any other form, shall be lawful only if the same is done by ensuring the suppression of identities of the parties in the legal proceeding;

(7) In any legal proceeding before it under the Act, the court shall comply with data protection measures in accordance with the provisions of the section 11 of the Act;

(8) The Ombudsman also, while holding the inquiry, shall protect the identity of the protected person by following above mentioned provisions.

10. Care and protection of children.-

1. State Government shall take appropriate measures for care and protection of all children affected by HIV or HIV-positive children which also includes HIV prevention, counselling and testing activities;
2. State Government shall also ensure free healthcare services and treatment to all children affected by HIV or HIV-positive children who -are living in child care institutions established under Juvenile Justice (Care and Protection of Children) Act, 2015;
3. The Child Welfare Committee shall take appropriate measures for safe keeping documents related to the property of children affected by HIV or AIDS;
4. State Government, within three' months of notifications of these rules, shall lay-down the mechanism and procedure for protection of property of children affected by HIV or AIDS;
5. The Ombudsman shall establish effective linkages with Child Welfare Committee and transfer the cases falling in their jurisdiction;
6. The Appropriate authority shall disseminate information about the Child Welfare Committee to all children affected by HIV or HIV-affected persons or HIV-positive persons;

11 Procedures in inquiries.-

Ombudsman while holding any inquiry under any of the provisions of the Act and these rules, shall follow the procedure laid down for Civil Court under Code of Civil. Procedure, 1908.

12 Report be treated as confidential.-

All reports related to any child affected by HIV or HIV-affected person or HIV-positive person and considered by the Ombudsman or officer or healthcare provider or institution shall be treated as confidential:

Provided that the Ombudsman may, if it so thinks fit, allow access to case record, orders and relevant papers : of any child affected by HIV or HIV-affected person or HIV- positive person.

13 Measures for Public awareness.-

The State Government shall take necessary measures to ensure that—

(1) the provisions of the Act and these rules are given wide publicity through media including television, radio and print media at regular intervals so as to make the general public, child affected by HIV or HIV-affected person or HIV-positive person aware of such provisions;

(2) the officers of the State Government and other concerned. Persons shall be imparted periodic training on the matters relating to the implementation of the provisions of the Act.

14 Protection of action taken in good faith.-

No suit, prosecution or other legal proceeding shall lie against the Ombudsman or officer of the State Government or any person acting under the directions of the Ombudsman or State Government, as the case may be, in respect of anything which is done in good faith or intended to be done in pursuance of the Act or of any these rules.

15 Non-Compliance of the Provisions.-

In any case where Ombudsman or officer or healthcare provider or institution fails to comply with the provisions of the Act and these Rules framed there under, the State Government may take action against such Ombudsman or officer or healthcare provider or institution etc. after due inquiry and simultaneously make alternative arrangements for discharge of functions for effective implementation of the Act and rules.

Form 1

(see rule 6(2))

Form for making Complaint to Ombudsman

Name: _____ (Optional) Date: _____

Phone/Mobile No: _____

Email: Fax _____

Address for communication: _____

Date of Incident. _____

Place of Incident _____

Description of incident: _____

Person/ Institution responsible for the incident: _____

Signature/ Thumb Impression of
Complainant*

* Where the complaint is received telephonically and reduced to writing by Ombudsman, the Ombudsman shall sign the Form.

For Official Use only:

Unique Complaint Number: _____

In-Referral: Self/State Level Networks/DLN/NGOs/Other _____

By order and in the name of the Governor of Gujarat,

S. N. GOSAI,
Under Secretary to Government.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR.